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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/543,049	07/21/2005	James William Godfrey	PB60017USW	3927
23347 7590 03/22/2010 GLAXOSMITHKLINE CORPORATE INTELLECTUAL PROPERTY, MAI B482 FIVE MOORE DR., PO BOX 13398 RESEARCH TRIANGLE PARK, NC 27709-3398				
EXAMINER				
OSTRUP, CLINTON T				
ART UNIT		PAPER NUMBER		
3771				
NOTIFICATION DATE		DELIVERY MODE		
03/22/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/543,049	Applicant(s) GODFREY, JAMES WILLIAM
Examiner CLINTON OSTRUP	Art Unit 3771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 22 February 2010. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 19, 24-25, 28-54.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771

/Clinton Ostrup/
Examiner, Art Unit 3771

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments have not been found convincing. The examiner agrees with Applicant argument, on page 7, second to last paragraph, that Brand does not teach a fixation device having a ring body which is manufactured with an endless angular extent and an integrally formed weakened zone therein, that the weakened zone is a structural discontinuity in the body, wherein the structural discontinuity is a notch, that the notch extends from the inner circumferential surface to the outer circumferential surface, and forming an axial split in the body at the weakened zone. However, the rejection is an obviousness rejection based on Brand in view of McOnie and further in view of Trimmer, not an anticipatory rejection based on Brand alone.

The examiner respectfully disagrees with applicant's argument, on page 7, last paragraph - page 8, second paragraph, that McOnie fails to teach a method of fixing a first part to a multi-part assembly to a second part thereof, because McOnie fails to teach a ring manufactures with an integrally formed weakened zone therein and is silent in regard to how the first ring is fractured. McOnie clearly teaches "The seal ring, prior to fracture, has the elastomer cup both chemically and thermally attached to it. The seal ring is then fractured along two diametrically opposite uneven fracture lines. The elastomer cup is cut along one of the seal ring fracture lines, allowing the cup at the diametrically opposite fracture line to act as a hinge when the fractured seal ring is opened to be placed around the shaft of the rotating equipment during installation. The elastomer cup causes the re-alignment of the two halves of the seal ring when it is fittingly engaged into the tapered rotary housing." See: col. 2, lines 25-35. McOnie then goes on to teach that "The elastomeric rotary face cup 14 is securely bonded to the rear portion of the outer circumference of the rotary face seal ring 16. After bonding, the rotary face seal ring is fractured at two points 41, forming approximately equal halves. The cup 14 is cut or otherwise separated entirely through its cross section at a cut line 36 which is directly adjacent to one of the rotary seal ring 16 fracture lines 41. The elastomeric cup 14 may have a partial cut line 37 which does not extend entirely through the cross section of the cup 14. Partial cut line 37 is located at a point adjacent to the other rotary face seal ring 16 fracture line 41 and diametrically opposite cut line 36. Partial cut line 37 of the elastomeric cup 14 acts as a hinge point, allowing the two semi-circular sections of the rotary face assembly 27 to be opened at the fracture points and placed around the drive sleeve 50. After having passed over the drive sleeve 50 the two halves of the rotary face assembly 27 are brought together with the elastomeric rotary face cup 14 acting as a hinge causing the two halves of the rotary face seal ring 16 and the elastomeric cup 14 to properly align themselves along their respective fracture lines 41 and cut lines 36 and 37 creating a full circular component. See: col. 5, lines 20-43. Thus, McOnie clearly teaches forming a ring body (27) with an integrally formed weakened zone (41 at cut line 36) and how the ring (27 which comprises cup 14 and rotary seal ring 16) is fractured. See: figure 1.

Applicant then argues on page 8, second full paragraph, that the weakened zone of Timmer is configured to allow deformation of the ring at that point so that the closed ring can be moved from a first configuration to a second configuration and that it is a requirement that the Timmer ring be readily deformed without breaking, hence Timmer does not recite a weakened zone as claimed. However, the examiner respectfully reminds applicant the he merely used Timmer to teach the reasoning for forming rings with weakened zones in order to form rings that can be split without becoming entangled with other rings, which Timmer specifically teaches "In general, automation of a mounting operation is difficult, because the known applied elements, called circlips, used for locking and spacing machine components such as bearings, become easily entangled in each other and obstruct this operation. Circlips are open ring-like elements which can be mounted automatically with special tools. They are disadvantageous, mainly due to their separated endparts, in that the rings become entangled. Disentangling of these rings, which must be carried out by hand, will have a most detrimental effect on the efficiency of the mounting operation... According to the invention this object is achieved by providing a ring with a closed uninterrupted angular shape and including a weakened part which allows the adjacent endparts to be pressed to each other without disengaging the endparts from the weakened part." See: col. 1, lines 10-35.

Regarding Applicant's argument on page 9, first full paragraph, that the combination of these teachings would result in an inoperable method of fixing a first part of a multi-part assembly to a second part thereof because McOnie does not teach a fixation device, as the elastomeric cup 14 of the sealing assembly, required to hold together the separate halves of the rotary face seal ring 16 would allow relative movement of the first and second part of the multi-part assembly of Brand; and, Brand teaches a joining the device housing to a ring or collar affixed around the neck of an aerosol canister to minimize the relative movement of the component parts has not been found convincing.

As discussed in the previous Office Action, the question is whether forming a ring with a weakened zone and then splitting the ring at the weakened zone, to form the same ring described by Brand et al., and then using the ring to fix the same components disclosed by Brand together is unobvious over the teachings of Brand et al. taken together with what is known in the prior art. Brand is silent with respect to how their fixation device is formed and that the final fixation device, as claimed instantly, becomes the same fixation device taught by Brand after the weakened zone is removed and that the fixation device is ultimately being used to form the same apparatus as disclosed by Brand (i.e. compare figures 3-4c with Brands figures 2 & 4a-4c) and the combined references on McOnie and Trimmer were merely used to show that it known in the art to form a ring with a weakened zone, fracture the ring and then use the ring to connect two components together and Trimmer specifically describes a logical reasoning for doing such (i.e. to avoid the open rings becoming entangled with one another.

In response to applicant's argument on page 9, last paragraph to page 10 first paragraph, that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Regarding applicant's argument on page 10, that claims 39-42 are allowable based on their dependency from claim 19 has not been found convincing because claim 19 is obvious over the combined teachings of Brand, McOnie, and Trimmer.

Therefore, the said rejections have been MAINTAINED. .

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